

additional information as it is developed.

(9) Whenever the Bank determines during the course of an investigation that it is necessary to compel or induce the cooperation of an employee, the Bank shall first consult with the Department of Justice. The Department of Justice will coordinate with the Bank to determine the procedures the Bank may use to compel an employee's participation without foreclosing possible criminal proceedings.

(10) The Bank shall maintain records of all disclosures that have been reported or investigated.

(11) All employees shall cooperate fully with officials of the Bank or other agencies who are conducting investigations of unauthorized disclosures of classified information.

(12) Employees determined by the Bank to have knowingly participated in an unauthorized disclosure of classified information or who have refused to cooperate with an investigation of such a disclosure shall be denied further access to classified information and shall be subject to other appropriate administrative sanctions. Prior to taking action against an employee in connection with the unauthorized disclosure or classified information, the Bank shall consult with the Department of Justice, Criminal Division.

PART 404—INFORMATION DISCLOSURE

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act.

- Sec.
- 404.1 General provisions.
- 404.2 Definitions.
- 404.3 Public reference facilities.
- 404.4 Request requirements.
- 404.5 Time for processing.
- 404.6 Release of records under the Freedom of Information Act.
- 404.7 Confidential business information.
- 404.8 Initial determination.
- 404.9 Schedule of fees.
- 404.10 Fee waivers or reductions.

- 404.11 Administrative appeal.

Subpart B—Protection of Privacy and Access to Records Under the Privacy Act of 1974

- 404.12 General provisions.
- 404.13 Definitions.
- 404.14 Requirements of request for access.
- 404.15 Initial determination.
- 404.16 Schedule of fees.
- 404.17 Appeal of denials of access.
- 404.18 Requests for correction of records.
- 404.19 Request for accounting of record disclosures.
- 404.20 Notice of court-ordered and emergency disclosures.
- 404.21 Submission of social security and passport numbers.
- 404.22 Government contracts.
- 404.23 Other rights and services.

Subpart C—Demands for Testimony of Current and Former Ex-Im Bank Personnel and for Production of Ex-Im Bank Records

- 404.24 General provisions.
- 404.25 Applicability.
- 404.26 Definitions.
- 404.27 Demand requirements.
- 404.28 Notification of General Counsel required.
- 404.29 Restrictions on testimony and production of records.
- 404.30 Factors General Counsel may consider in determining whether to authorize testimony and/or the production of records.
- 404.31 Procedure for declining to testify and/or produce records.
- 404.32 Procedure in the event a decision concerning a demand is not made prior to the time a response to the demand is required.
- 404.33 Procedure in the event of an adverse ruling.
- 404.34 Procedure for demands for testimony or production of documents regarding confidential information.
- 404.35 Procedure for requests for Ex-Im Bank employees to provide expert or opinion testimony.
- 404.36 No private right of action.

Subparts D–E [Reserved]

AUTHORITY: 5 U.S.C. 552 and 552a.
 Section 404.7 also issued under E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.
 Section 404.21 also issued under 5 U.S.C. 552a note.
 Subpart C also issued under 5 U.S.C. 301, 12 U.S.C. 635.

SOURCE: 64 FR 14374, Mar. 25, 1999, unless otherwise noted.

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act.

§ 404.1 General provisions.

(a) *Purpose.* This subpart establishes policy, procedures, requirements, and responsibilities for administration of the Freedom of Information Act (FOIA), 5 U.S.C. 552, at the Export-Import Bank of the United States (Ex-Im Bank).

(b) *Policy.* It is Ex-Im Bank's policy to honor all requests for the disclosure of its records, provided that disclosure would not adversely affect a legitimate public or private interest and would not impose an unreasonable burden on Ex-Im Bank. However, this subpart also recognizes that the soundness of many Ex-Im Bank programs depends upon the receipt of reliable commercial, technical, financial, and business information relating to applicants for Ex-Im Bank assistance and that receipt of such information depends on Ex-Im Bank's ability to hold such information in confidence. Consequently, except as provided by applicable law and this regulation, information provided to Ex-Im Bank in confidence will not be disclosed without the submitter's consent.

(c) *Scope.* All record requests made to Ex-Im Bank shall be processed under this subpart, except that information customarily furnished to the public in the regular course of the performance of official duties may continue to be furnished to the public without complying with this subpart. Requests made by individuals under the Privacy Act of 1974 which are processed under subpart B of this part also shall be processed under this subpart A.

(d) *Ex-Im Bank Internet site.* Ex-Im Bank maintains an Internet site at <http://www.exim.gov>. The site contains information on Ex-Im Bank functions, activities, programs, and transactions. Web site visitors have access to Board of Directors and Loan Committee meeting minutes, country information, and Ex-Im Bank press releases, among other information. Ex-Im Bank encourages all prospective FOIA requesters to visit the site prior to submission of a FOIA request.

(e) *Delegation.* Any action or determination in this subpart which is the responsibility of a specific Ex-Im Bank employee, may be delegated to a duly designated alternate.

(f) *Ex-Im Bank address.* The Export-Import Bank of the United States is located at 811 Vermont Avenue, NW, Washington, DC 20571.

§ 404.2 Definitions.

For purposes of this subpart, the following definitions shall apply:

All other requesters—Requesters other than commercial use requesters, educational and non-commercial scientific requesters, or representatives of the news media.

Appeal—A written request to the Ex-Im Bank Assistant General Counsel for Administration for reversal of an adverse initial determination.

Business information—Potentially confidential commercial or financial information that is provided to Ex-Im Bank.

Business submitter—Any person who provides business information to Ex-Im Bank.

Commercial use request—A request for a use or purpose that furthers the commercial, trade or profit interest of the requester.

Direct costs—Expenditures incurred in the search, review, and duplication of records in response to a FOIA request.

Educational institution—A preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, or an institution of professional or vocational education.

Final determination—The written decision by the Assistant General Counsel for Administration on an appeal.

Initial determination—The initial written determination by Ex-Im Bank regarding disclosure of requested records.

Non-commercial scientific institution—An institution that is operated for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry and that is not operated solely for purposes of furthering a business, trade or profit interest.

§ 404.3

Person—An individual, partnership, corporation, association or organization other than a federal government agency.

Record—All papers, memoranda or other documentary material, or copies thereof, regardless of physical form or characteristics, created or received by Ex-Im Bank and preserved as evidence of the activities of Ex-Im Bank. “Record” does not include publications which are available to the public through the FEDERAL REGISTER, sale or free distribution.

Redaction—The process of removing non-disclosable material from a record so that the remainder may be released.

Representative of the news media—A person actively gathering information on behalf of an entity organized and operated to publish or broadcast news to the public. Freelance journalists shall qualify as representatives of the news media when they can demonstrate that a request is reasonably likely to lead to publication.

Request—Any record request made to Ex-Im Bank under the FOIA.

Requester—Any person making a request.

Review—The process of examining a record to determine whether any portion is required to be withheld. It includes redaction, duplication, and any other preparation for release. Review does not include time spent resolving general legal and policy issues regarding the application of exemptions.

Search—The process of identifying and collecting records pursuant to a request.

Trade secrets—All forms and types of financial, business, scientific, technical, economic or engineering information, including, but not limited to, patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs or codes.

Unusual circumstances—The need to search for and collect requested records from facilities that are separate from Ex-Im Bank headquarters; the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or the need for consultation with another agency a

12 CFR Ch. IV (1–1–07 Edition)

person that has a substantial interest in the determination of the request.

Working days—All calendar days excluding Saturdays, Sundays, and Federal Government holidays.

§ 404.3 Public reference facilities.

Ex-Im Bank maintains a public reading room which contains the Ex-Im Bank records that the FOIA requires to be made available for public inspection and copying. The records available under this section include copies of records released pursuant to the FOIA that Ex-Im Bank determines have, or are likely to, become the subject of subsequent requests for substantially the same records. Requesters shall be responsible for the cost of duplicating such material in accordance with the provisions of § 404.9(e). Persons desiring to use the reading room should contact the Ex-Im Bank Freedom of Information and Privacy Office, either in writing at the address at § 404.1(f) or by telephone at (202) 565–3946 or (800) 565–3946, to arrange a time to inspect the available records.

§ 404.4 Request requirements.

(a) *Form*. Requests must be made in writing and must be signed by, or on behalf of, the requester. Requests should be addressed to the Freedom of Information and Privacy Office at the address in § 404.1(f) and should contain both the return address and telephone number of the requester.

(b) *Description of records requested*. Each request must describe the records sought in sufficient detail so as to enable a professional employee of Ex-Im Bank familiar with the subject matter of the request to locate the record with a reasonable amount of effort. A request shall not be deemed to have been received until such time as the request adequately identifies the records sought. To the extent practicable, a description should include relevant dates, format, subject matter, and the name of any person to whom the record is known to relate. A general request for records with no accompanying date restriction, either express or implied, shall be deemed to be a request for records created within the preceding twelve months.

Export-Import Bank of the U.S.

§ 404.6

(c) *Fee statement.* The request must contain a statement expressing willingness to pay fees for the requested records or a request for a fee waiver (see § 404.10) before the request shall be deemed to have been received. A fee statement may specify the maximum amount a requester is willing to pay for processing the request.

(1) Whenever a requester submits a FOIA request that does not contain a fee statement or a request for a fee waiver, Ex-Im Bank shall advise the requester of the requirements of this paragraph. If the requester fails to respond within ten working days of such notification, then the Freedom of Information and Privacy Office shall notify the requester, in writing, that Ex-Im Bank will not process the request.

(2) A general statement by the requester expressing willingness to pay all applicable fees under § 404.9 shall be deemed an agreement to pay up to \$50.00. If Ex-Im Bank estimates that the fees for a request will exceed \$50.00, then Ex-Im Bank shall offer the requester the opportunity to agree, in writing, either to pay a greater fee or to modify the request as a means of limiting the cost.

(d) *Written notice of amendment.* The requester should provide any amendment to the original request in writing to Ex-Im Bank.

(e) *Requester assistance.* Ex-Im Bank shall make reasonable efforts to assist a requester in complying with the requirements of this section.

§ 404.5 Time for processing.

(a) *General.* Ex-Im Bank shall respond to requests within twenty working days of the date of receipt of the request unless unusual circumstances exist. Ex-Im Bank shall provide written notice to the requester whenever such unusual circumstances necessitate an extension. If the extension is expected to exceed ten working days, then Ex-Im Bank shall offer the requester the opportunity to:

(1) Alter the request so that it may be processed within the time limit; or

(2) Propose an alternative, feasible time frame for processing the request.

(b) *Date of receipt.* A request shall be deemed to have been received on the date that the request is received in the

Freedom of Information and Privacy Office, provided that the requester has met all the requirements of § 404.4. Ex-Im Bank shall notify the requester of the date on which a request was officially received.

(c) *Order of processing.* Ex-Im Bank ordinarily shall process requests according to their order of receipt.

(d) *Expedited processing.* A request for expedited processing must be included in the original request for records and may be granted at the discretion of Ex-Im Bank based upon the requester's demonstration of:

(1) An imminent threat to the life or physical safety of an individual; or

(2) In the case of a requester who is a representative of the news media, an urgency to inform the public concerning actual or alleged Federal Government activity. Ex-Im Bank shall provide notice of its determination on expedited processing to the requester. A requester may file an administrative appeal, as set forth at § 404.11, based on a denial of a request for expedited processing. Ex-Im Bank shall grant expeditious consideration to any such appeal.

§ 404.6 Release of records under the Freedom of Information Act.

(a) *Creation of records.* A reasonable request for material not in existence may be honored at Ex-Im Bank's discretion when tabulation or compilation will not significantly burden Ex-Im Bank, its programs or its activities.

(b) *Discretionary release.* Consistent with federal government policy, material technically qualifying for exemption from disclosure under 5 U.S.C. 552(b)(5) may be made available when disclosure would not adversely affect legitimate public or private interests, violate law or impose an unreasonable burden on Ex-Im Bank. This policy does not, however, create any right enforceable in a court of law.

(c) *Segregable records.* Whenever it is determined that a portion of a record is exempt from disclosure, any reasonably segregable portion of the record shall be provided to the requester after redaction of the exempt material. If segregation would render the document meaningless, Ex-Im Bank shall withhold the entire record.

(d) *Date for determining responsive records.* Only those records within Ex-Im Bank's possession and control as of the date of receipt of a request shall be deemed to be responsive to a request.

§ 404.7 Confidential business information.

(a) *Scope.* This section applies to all business information, as defined in § 404.2. Such information shall only be disclosed pursuant to a FOIA request in accordance with this section.

(b) *Submitter designation.* All business submitters should designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portion of any submission that they consider to be exempt from disclosure under 5 U.S.C. 552(b)(4).

(c) *Pre-disclosure notice to the business submitter.* Whenever Ex-Im Bank receives a FOIA request seeking disclosure of business information, Ex-Im Bank shall provide prompt written notice to the submitter of such information. This notice shall include a description or a copy of the records containing the business information. Such notice shall not be required, however, if:

- (1) Ex-Im Bank determines that the records shall not be disclosed;
- (2) The records have been published or otherwise made available to the public; or
- (3) disclosure of the records is required by law.

(d) *Opportunity to object to disclosure.* The business submitter shall have ten working days from and including the date of the notification letter to provide Ex-Im Bank with a detailed statement of any objection to disclosure of the records. A submitter located outside the United States shall have twenty working days to object to disclosure. Ex-Im Bank may extend the time for objection upon timely request from the submitter and for good cause shown. A statement of objection must specify all grounds under the FOIA for withholding the information.

(e) *Notice to the requester.* The Freedom of Information and Privacy Office shall notify the requester in writing whenever a business submitter is afforded the opportunity to object to dis-

closure of records pursuant to paragraph (c) of this section.

(f) *Disclosure of confidential business information.* Ex-Im Bank shall consider any objections raised by the business submitter prior to making its disclosure decision.

(g) *Notice of intent to disclose.* Whenever Ex-Im Bank determines to disclose business information over the objection of a business submitter, Ex-Im Bank shall notify the business submitter, in writing, of such determination, the reasons for the decision, and the expected disclosure date. This notification—which shall be provided at least ten days prior to the planned disclosure date and which shall include a copy or description of the records at issue—is intended to afford the submitter the opportunity to seek judicial review.

(h) *Notice to requester of disclosure date.* If Ex-Im Bank determines to disclose records over a business submitter's objection, then Ex-Im Bank shall notify the requester of the expected disclosure date.

(i) *Appeal.* Whenever Ex-Im Bank determines to disclose, pursuant to an administrative appeal, business information that initially was withheld from disclosure under 5 U.S.C. 552(b)(4), Ex-Im Bank shall notify the business submitter. Such notice shall be in writing and shall be provided ten working days prior to the proposed disclosure date. It shall include a copy or description of the records at issue and a statement of Ex-Im Bank's reasons for disclosure.

(j) *Notice of FOIA lawsuit.* Ex-Im Bank shall promptly notify the submitter whenever a requester brings suit against Ex-Im Bank seeking to compel the release of business information covered by this section. Ex-Im Bank shall promptly notify the requester when a submitter brings suit against Ex-Im seeking to restrict the release of business information that is covered by this section.

(k) *Exception.* Notwithstanding the foregoing provisions of this part, Ex-Im Bank may, upon request or on its own initiative, publicly disclose the parties to transactions for which Ex-Im Bank approves support, the amount of such

Export-Import Bank of the U.S.

§ 404.9

support, the identity of any participants involved, a general description of the related U.S. exports, and the country to which such exports are destined.

§ 404.8 Initial determination.

(a) *Authority to grant or deny requests.* The Freedom of Information and Privacy Office shall be responsible for search, review, and the initial determination.

(b) *Referrals to other government agencies.* A requested record in Ex-Im Bank's possession that was created or classified by another Federal agency shall be referred to such agency for direct response to the requester. The Freedom of Information and Privacy Office shall notify the requester of any such referral, the number of documents so referred, and the name and address of each agency to which the request has been referred.

(c) *Notification of Ex-Im Bank action.* The Freedom of Information and Privacy Office shall notify the requester in writing of its decision to grant or deny the request.

(1) If the decision is made to grant a request, then Ex-Im Bank shall promptly disclose the requested records and shall inform the requester of any fee payable under § 404.9.

(2) A denial is a determination to withhold any requested record in whole or in part, a determination that a requested record does not exist or cannot be located or a determination that what has been requested is not a record subject to the FOIA. Whenever Ex-Im Bank withholds information, such notice shall include:

(i) The name, title, and signature of the person responsible for the determination;

(ii) The statutory basis for non-disclosure; and

(iii) A statement that any denial may be appealed under § 404.11 and a brief description of the requirements of that section.

(d) *Material withheld.* Ex-Im Bank shall make reasonable efforts to inform the requester of the volume of material withheld pursuant to a full or partial denial and the extent of any redaction. Ex-Im Bank shall not, however, indicate the extent of any denial when

doing so could harm an interest protected by an applicable exemption.

§ 404.9 Schedule of fees.

(a) *General.* Ex-Im Bank shall charge fees to recover the full allowable direct costs it incurs in processing requests. Ex-Im Bank shall attempt to conduct searches in the most efficient manner to minimize costs for both Ex-Im Bank and the requester.

(b) *Categories of requesters.* Fees shall be assessed according to the status of the requester. The specific schedule of fees for each requester category (each as defined in § 404.2) is prescribed as follows:

(1) *Commercial use requesters.* Ex-Im Bank shall charge the full costs for search, review, and duplication.

(2) *Educational and non-commercial scientific institution requesters.* Ex-Im Bank shall charge only for the cost of duplication in excess of 100 pages. No fee will be charged for search or review.

(3) *Representatives of the news media.* Ex-Im Bank shall charge only for the cost of duplication in excess of 100 pages. No fee will be charged for search or review.

(4) *All other requesters.* Ex-Im Bank shall charge for the cost of search, review, and duplication, except that 100 pages of duplication and two hours of professional search time shall be furnished without charge.

(c) *Search and review fees.* Ex-Im Bank shall charge the following fees for search and review:

(1) *Clerical.* Hourly rate—\$16.00.

(2) *Professional.* Hourly rate—\$32.00.

(3) *Computer Searches.* Hourly rate—based upon the salary of the employee performing the work and the cost of operating any equipment.

(d) *Administrative appeals.* Ex-Im Bank shall not charge for administrative review of an exemption applied in an initial determination. Ex-Im Bank shall charge, however, for search and review pursuant to an administrative appeal if the appeal is based on a claim other than the application of an exemption in the initial determination.

(e) *Duplication.* Ex-Im Bank shall charge \$.10 per page for paper copy duplication. Ex-Im Bank shall charge the actual or estimated cost of copies prepared by computer, such as tape or

§ 404.10

printouts, or for other methods of duplication. When duplication charges are expected to exceed \$50.00, Ex-Im Bank shall seek the requester's consent to be responsible for the estimated charges unless a requester has already expressed a willingness to pay duplication fees in excess of \$50.00. Ex-Im Bank shall also offer the requester the opportunity to alter the request in order to reduce duplication costs.

(f) *Fees for searches that produce no records.* Fees shall be payable as provided in this section even though searches and review do not generate any disclosable records.

(g) *Aggregating requests.* A requester, or a group of requesters acting in concert, shall not file multiple requests, seeking portions of a record or similar or related records, in order to avoid payment of fees. Ex-Im Bank shall aggregate any such requests and charge as if the requests were a single request.

(h) *Special services charges.* Complying with requests for special services such as those listed in this paragraph is entirely at the discretion of Ex-Im Bank. Ex-Im Bank shall recover the full costs of providing such services to the extent that it elects to provide them.

(1) *Certifications.* Ex-Im Bank shall charge \$25.00 to certify the authenticity of any Ex-Im Bank record or any copy of such record.

(2) *Special shipping.* Ex-Im Bank may ship by special means (e.g., express mail) if the requester so desires, provided that the requester has paid or has expressly undertaken to pay all costs of such special services. Ex-Im Bank shall not charge for ordinary packaging and mailing.

(i) *Minimum fee.* Ex-Im Bank shall waive a final fee of \$5.00 or less.

(j) *Advance payment.* Whenever Ex-Im Bank estimates that the fees are likely to exceed \$250.00, Ex-Im Bank shall notify the requester of the likely cost and shall require an advance payment of an amount up to the full estimated charges.

(k) *Failure to pay fee.* Ex-Im Bank shall not process a request by a requester who has failed to pay a fee for a previous request unless and until such a requester had paid the full amount owed and also has paid, in advance, the total estimated charges for

12 CFR Ch. IV (1–1–07 Edition)

the new request. The administrative time limits for the new request—set forth in § 404.5—shall begin to run only after Ex-Im Bank has received the payments described in this section.

§ 404.10 Fee waivers or reductions.

(a) *General.* Upon request, Ex-Im Bank shall consider a discretionary fee waiver or reduction of the fees chargeable under § 404.9.

(b) *Form of request for fee waiver.* Ex-Im Bank shall deny a request for a waiver or reduction of fees that does not clearly address each of the following:

(1) The proposed use of the records and whether the requester will derive income or other benefit from such use;

(2) An explanation of the reasons why the public will benefit from such use; and

(3) If specialized use of the records is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(d) *Burden of proof.* In all cases, the requester has the burden of presenting sufficient evidence or information to justify the fee waiver or reduction. The requester may use the procedures set forth in § 404.11 to appeal a denial of a fee waiver request.

(e) *Employee requests.* Fees of less than \$50.00 shall be waived in connection with any request by an employee, former employee, or applicant for employment, related to a grievance or complaint of discrimination against Ex-Im Bank.

§ 404.11 Administrative appeal.

(a) *General.* Whenever a request for records, a fee waiver or expedited processing has been denied, the requester may appeal the denial within thirty days of the date of Ex-Im Bank's issuance of notice of such action. Any denial under this subpart must be appealed according to this section before a requester is eligible to seek judicial review.

(b) *Form.* Appeals must be made in writing and must be signed by the appellant. Appeals should be addressed to the Assistant General Counsel for Administration at the address at § 404.1(f). Both the envelope and the appeal letter

Export-Import Bank of the U.S.

§ 404.13

should be clearly marked in capital letters: "FREEDOM OF INFORMATION ACT APPEAL." Failure to properly mark or address the appeal may slow its processing. The letter should include:

(1) A copy of the denied request or a description of the records requested;

(2) The name and title of the Ex-Im Bank employee who denied the request;

(3) The date on which the request was denied;

(4) The Ex-Im Bank identification number assigned to the request; and

(5) The return address and telephone number of the appellant.

(c) *Processing schedule.* Appeals shall not be deemed to have been received until the Assistant General Counsel for Administration receives the appeal. Ex-Im Bank shall notify the requester of the date on which an appeal was officially received. The disposition of an appeal shall be made in writing within twenty working days after the date of receipt of an appeal. The Assistant General Counsel for Administration may extend the time for response an additional ten working days if unusual circumstances exist, provided that the Assistant General Counsel for Administration notifies the requester in writing.

(d) *Ex-Im Bank decision.* A final determination which affirms an adverse initial determination shall set forth the reasons for affirming the denial and shall advise the requester of the right to seek judicial review. If the initial determination is reversed on appeal, the request shall be remanded to the Freedom of Information and Privacy Office to be processed promptly in accordance with the decision on appeal, subject to § 404.7(i).

Subpart B—Access to Records Under the Privacy Act of 1974

§ 404.12 General provisions.

(a) *Purpose.* This subpart establishes policies, procedures, requirements, and responsibilities for administration of the Privacy Act of 1974, 5 U.S.C. 552a, at the Export-Import Bank of the United States (Ex-Im Bank).

(b) *Relationship to the Freedom of Information Act.* The Privacy Act applies to records contained in a systems of

records, as defined in § 404.13. If an individual submits a request for access to records and cites the Privacy Act, but the records sought are not contained in a Privacy Act system of records, then the request shall be processed only under subpart A of this part, Procedures for Disclosure of Records Under the Freedom of Information Act. All requests properly processed under this subpart B shall also be processed under subpart A of this part.

(c) *Appellate authority.* The Ex-Im Bank Assistant General Counsel for Administration is the appellate authority for all Privacy Act requests.

(d) *Delegation.* Any action or determination in this subpart which is the responsibility of a specific Ex-Im Bank employee may be delegated to a duly designated alternate.

(e) *Ex-Im Bank address.* The Export-Import Bank of the United States is located at 811 Vermont Avenue, NW, Washington, DC 20571.

§ 404.13 Definitions.

For purposes of this subpart, the following definitions shall apply:

Appeal—A written request to the Ex-Im Bank Assistant General Counsel for Administration for reversal of an adverse initial determination.

Final determination—The written decision by the Assistant General Counsel for Administration on an appeal.

Individual—A citizen of the United States or an alien lawfully admitted for permanent residence.

Initial determination—The initial written determination in response to a Privacy Act request.

Record—Any item, collection or grouping of information about an individual that is maintained within a system of records and that contains the individual's name or an identifying number, symbol or other identifying particular assigned to the individual.

Redaction—The process of removing non-disclosable material from a record so that the remainder may be released.

Request for access—A request to view a record.

Request for accounting—A request for a list of all disclosures of a record.

Request for correction—A request to modify a record.

§ 404.14

12 CFR Ch. IV (1–1–07 Edition)

Requester—An individual who makes a request under the Privacy Act.

Review—The process of examining a record to determine whether any portion is required to be withheld.

Search—The process of identifying and collecting records pursuant to a request.

System of records—A group of any records under the control of an agency from which information is retrieved by the name of the individual or some identifying number, symbol or other identifying particular assigned to the individual.

Working days—All calendar days excluding Saturdays, Sundays, and Federal Government holidays.

§ 404.14 Requirements of request for access.

(a) *Form.* Requests for access must be made in writing and must be signed by the requester. Requests should be addressed to the Freedom of Information and Privacy Office at the address in § 404.12(e) and should contain both the return address and telephone number of the requester.

(b) *Description of records sought.* A request for access must describe the records sought in sufficient detail so as to enable Ex-Im Bank personnel to locate the system of records containing the records with a reasonable amount of effort. To the extent practicable, such description should include the nature of the record sought, the date of the record or the period in which the record was compiled, and the name or identifying number of the system of records in which the requester believes the record is kept. A requester may include his or her social security number in the request in order to facilitate the identification and location of the requested records.

(c) *Fee statement.* The request must contain a statement expressing willingness to pay fees for processing the request or a request for a fee waiver (see § 404.16(d)).

(1) Whenever a requester submits a request for access that does not contain a fee statement or a request for a fee waiver, Ex-Im Bank shall advise the requester of the requirements of this section. If the requester fails to respond within ten working days of such

notification, then the Freedom of Information and Privacy Office shall notify the requester, in writing, that Ex-Im Bank will not process the request.

(2) A general statement by the requester expressing willingness to pay all applicable fees shall be deemed an agreement to pay up to \$25.00. If Ex-Im Bank estimates that the fees for a request will exceed \$25.00, then Ex-Im Bank shall notify the requester. Ex-Im Bank shall offer the requester the opportunity to agree, in writing, either to pay a greater fee or to modify the request as a means of limiting the cost.

(3) Whenever the estimated fee chargeable under this section exceeds \$25.00, Ex-Im Bank reserves the right to require a requester to make an advance payment prior to processing the request.

(4) Ex-Im Bank shall not process a request by a requester who has failed to pay a fee for a previous request unless and until such requester had paid the full amount owed and also has paid, in advance, the total estimated charges for the new request.

(d) *Verification of identity.* An individual who submits a request for access must verify his or her identity. The request must include the requesters full name, current address, and date and place of birth. In addition, such requester must provide a notarized statement attesting to his or her identity.

(e) *Verification of guardianship.* When a parent or guardian of a minor or the guardian of a person judicially determined to be incompetent submits a request for access to records that relate to the minor or incompetent, such parent or guardian must establish:

(1) His or her own identity and the identity of the subject of the record in accordance with paragraph (d) of this section; and

(2) Parentage or guardianship of the subject of the record, either by providing a copy of the subject's birth certificate showing parentage or by providing a court order establishing guardianship.

(f) *Written notice of amendment.* The requester must provide any amendment to the original request in writing to Ex-Im Bank.

(g) *Requester assistance.* Ex-Im Bank shall make reasonable efforts to assist

Export-Import Bank of the U.S.

§ 404.17

a requester in complying with the requirements of this section.

(h) *Date of receipt.* Requests for access shall be deemed to have been received on the date that the request is received by the Freedom of Information and Privacy Office, provided that all the requirements of this section have been met. Ex-Im Bank shall notify the requester of the date on which it officially received a request.

§ 404.15 Initial determination.

(a) *Time for processing.* The Freedom of Information and Privacy Office shall respond to valid requests for access within twenty working days of the date of receipt of the request letter. The time for response may be extended an additional ten working days for good cause, provided that the Freedom of Information and Privacy Office notifies the requester in writing.

(b) *Notice regarding request for access.* The Freedom of Information and Privacy Office shall notify the requester in writing of its decision to grant or deny a request for access.

(1) If the request is granted, then the notice shall either include the requested records, in releasable form, or shall describe the manner in which access to the record will be granted. The notice also shall inform the requester of any processing fee.

(2) A denial is a determination to withhold any requested record in whole or in part or a determination that the requested record does not exist or cannot be located. If the request is denied, then the denial notice shall state:

(i) The name, signature, and title or position of the person responsible for the denial;

(ii) The reasons for the denial; and

(iii) The procedure for appeal of the denial under § 404.17 and a brief description of the requirements of that section.

(c) *Form of record disclosure.* Ex-Im Bank shall grant access to the requested records either by providing the requester with a copy of the record or, at the requester's option, by making the record available for inspection at a reasonable time and place. If Ex-Im Bank makes the record available for inspection, such inspection shall not unreasonably disrupt Ex-Im Bank oper-

ations. In addition, the requester must provide a form of official photographic identification—such as a passport, driver's license or identification badge—and any other form of identification bearing his or her name and address prior to inspection of the requested records. Records may be inspected by the requester in the presence of another individual, provided that the requester signs a form stating that Ex-Im Bank is authorized to disclose the record in the presence of both individuals.

§ 404.16 Schedule of fees.

(a) *Search and review.* Ex-Im Bank shall not charge for search and review.

(b) *Duplication.* Ex-Im Bank shall charge \$.10 per page for paper copy duplication. Ex-Im Bank shall charge the actual or estimated cost of copies prepared by computer, such as tape or printouts, or for other methods of reproduction or duplication.

(c) *Minimum fee.* Ex-Im Bank shall waive final fees of \$5.00 or less.

(d) *Fee waivers.* Ex-Im Bank may waive fees whenever it is determined to be in the public interest. Fees of less than \$50.00 shall be waived in connection with any request by an employee, former employee or applicant for employment, related to a grievance or complaint of discrimination against Ex-Im Bank.

(e) *Special services charges.* Complying with requests for special services such as those listed in this paragraph is entirely at the discretion of Ex-Im Bank. Ex-Im Bank shall recover the full costs of providing such services to the extent that it elects to provide them.

(1) *Certifications.* Ex-Im Bank shall charge \$25.00 to certify the authenticity of any Ex-Im Bank record or any copy of such record.

(2) *Special shipping.* Ex-Im Bank may ship by special means (e.g., express mail) if the requester so desires, provided that the requester has paid or has expressly undertaken to pay all costs of such special services. Ex-Im Bank shall not charge for ordinary packaging and mailing.

§ 404.17 Appeal of denials of access.

(a) *Appeals to the Assistant General Counsel for Administration.* Whenever

Ex-Im Bank denies a request for access or for waiver or reduction of fees, the requester may appeal the denial to the Assistant General Counsel for Administration within 30 working days of the date of Ex-Im Bank's issuance of notice of such action. Appeals must be made in writing and must be signed by the appellant. Appeals should be addressed to the Assistant General Counsel for Administration at the address in § 404.12(e). Both the envelope and the appeal letter should be clearly marked in capital letters: "PRIVACY ACT APPEAL." Failure to properly mark or address the appeal may slow its processing. An appeal shall not be deemed to have been received by Ex-Im Bank until the Assistant General Counsel for Administration receives the appeal letter. The letter should include:

- (1) A copy of the denied request or a description of the records requested;
- (2) The name and title of the Ex-Im Bank employee who denied the request;
- (3) The date on which the request was denied; and
- (4) The Ex-Im Bank identification number assigned to the request.

(b) *Final determination.* The disposition of an access appeal shall be made in writing within twenty working days after the date of receipt of the appeal. The Assistant General Counsel for Administration may extend the time for response an additional ten working days for good cause, provided that the requester is notified in writing. A decision affirming the denial of a request for access shall include a brief statement of the reasons for affirming the denial and shall advise the requester of the right to seek judicial review. If the initial determination is reversed, then the request shall be remanded to the Freedom of Information and Privacy Office to be processed in accordance with the decision on appeal.

§ 404.18 Requests for correction of records.

(a) *Form.* Requests for correction must be made in writing and must be signed by the requester. Requests should be addressed to the Freedom of Information and Privacy Office at the address in § 404.12(e) and should contain both the return address and telephone number of the requester. The request

must identify the particular record in question, state the correction sought, and set forth the justification for the correction. The requester also must verify his or her identity in accordance with the procedures set forth at § 404.14(d) and (e). Both the envelope and the request for correction itself should be clearly marked in capital letters: "PRIVACY ACT CORRECTION REQUEST."

(b) *Initial determination.* The Freedom of Information and Privacy Office shall respond to valid correction requests within ten working days of receipt of the request letter. If Ex-Im Bank grants the request for correction, then the Freedom of Information and Privacy Office shall advise the requester of his or her right to obtain a copy, in releasable form, of the corrected record. A denial notice shall state the reasons for the denial and shall advise the requester of the right to appeal. Ex-Im Bank shall not charge for processing requests for correction.

(c) *Appeal of denial of request for correction.* Whenever Ex-Im Bank denies a request for correction, the requester may appeal the denial to the Assistant General Counsel for Administration within thirty working days of Ex-Im Bank's issuance of notice of such action. Appeals must be made in writing and must be signed by the appellant. Appeals should be addressed to the Assistant General Counsel for Administration at the address set forth in § 404.12(e). Both the envelope and the appeal letter should be clearly marked in capital letters: "PRIVACY ACT CORRECTION APPEAL." Failure to properly mark or address the appeal may slow its processing. An appeal shall not be deemed to have been received by Ex-Im Bank until the Assistant General Counsel for Administration receives the appeal letter. The letter must include:

- (1) A copy of the denied request or a description of the correction sought;
- (2) The name and title of the Ex-Im Bank employee who denied the request;
- (3) The date on which the request was denied;
- (4) The Ex-Im Bank identification number assigned to the request; and
- (5) Any information said to justify the correction.

Export-Import Bank of the U.S.

§ 404.19

(d) *Final determination on correction appeal.* (1) The disposition of an appeal shall be made in writing within twenty working days after the date of receipt of an appeal. The Assistant General Counsel for Administration may extend the time for response an additional ten working days for good cause, provided that the requester is notified in writing.

(2) A decision affirming the denial of a request for access shall advise the appellant of the:

- (i) Reasons for affirming the denial;
- (ii) Right to seek judicial review; and
- (iii) Right to file a statement of disagreement, as provided in paragraph (e) of this section.

(3) If the initial determination is reversed, then the request shall be remanded to the Freedom of Information and Privacy Office to be processed in accordance with the decision on appeal.

(e) *Statement of disagreement.* Upon denial of a correction appeal, the appellant shall have the right to file a statement of disagreement with Ex-Im Bank, setting forth his or her reasons for disagreeing with the Agency's action. The statement should be addressed to the Freedom of Information and Privacy Office at the address in § 404.12(e) and must be received within thirty working days of Ex-Im Bank's issuance of the denial notice. A statement of disagreement must not exceed one typed page per fact disputed. Statements exceeding this limit shall be returned to the requester for editing. Upon receipt of a statement of disagreement under this section, the Freedom of Information and Privacy Office shall have the statement included in the system of records in which the disputed record is maintained and shall have the disputed record marked so as to indicate that a Statement of Disagreement has been filed. Ex-Im Bank may also append to the disputed record a written statement regarding Ex-Im Bank's reasons for denying the request to correct the record.

(f) *Notices of correction or disagreement.* In any disclosure of a record for which Ex-Im Bank has received a statement of disagreement, Ex-Im Bank shall clearly note any portion of the record which is disputed and shall provide a copy of the statement of disagreement.

Ex-Im Bank also may provide its own statement regarding the disputed record. In addition, whenever Ex-Im Bank corrects a record or receives a statement of disagreement, Ex-Im Bank shall, as is reasonable under the circumstances, advise any person or agency to which it previously disclosed such record of the correction or statement, provided that an accounting of such disclosure exists.

§ 404.19 Request for accounting of record disclosures.

(a) *Required information.* With respect to each system of records under Ex-Im Bank control, Ex-Im Bank shall maintain an accurate accounting of the date, nature, and purpose of each external disclosure of a record and the name and address of all persons, organizations, and agencies to which disclosure has been made. Ex-Im Bank shall retain this accounting for at least five years or the life of the record, whichever is longer.

(b) *Form.* An individual may obtain an accounting of all disclosures of a record, provided that such individual establishes his or her identity as the subject of such record in accordance with the procedures set forth at § 404.14(d) and (e). A request for an accounting must be made in writing and must be signed by the requester. The request should be addressed to the Freedom of Information and Privacy Office at the address in § 404.12(e) and should contain both the return address and telephone number of the requester. Both the envelope and the request itself should be clearly be marked in capital letters: "PRIVACY ACT ACCOUNTING REQUEST." Failure to properly mark or address the request may slow its processing. The request shall not be deemed to have been received by Ex-Im Bank until the Freedom of Information and Privacy Office receives the request. The letter must clearly identify the particular record for which the accounting is requested.

(c) *Initial determination.* The Freedom of Information and Privacy Office shall notify the requester whether the request will be granted or denied within ten working days of receipt of a valid request for an accounting. Ex-Im Bank

§ 404.20

12 CFR Ch. IV (1–1–07 Edition)

shall not charge for processing such a request.

(d) *Exceptions.* Ex-Im Bank shall not be required to provide an accounting to an individual when the accounting relates to a disclosure made:

- (1) To an employee within the agency;
- (2) Under the FOIA; or
- (3) To a law enforcement agency for an authorized law enforcement activity in response to a written request from such agency which specified the law enforcement activity for which the disclosure was sought.

§ 404.20 Notice of court-ordered and emergency disclosures.

(a) *Court-ordered disclosures.* When a record pertaining to an individual is required to be disclosed by a court order, the Assistant General Counsel for Administration shall make reasonable efforts to provide notice to the subject individual. Notice shall be given within a reasonable time after Ex-Im Bank's receipt of the order, except that in a case in which the order is not a matter of public record, notice shall be given only after the order becomes public. Such notice shall be mailed to the individual's last known address and shall contain a copy of the order and a description of the information disclosed.

(b) *Emergency disclosures.* If a record has been disclosed by Ex-Im Bank under compelling circumstances affecting the health or safety of any person, then, within ten working days, the Assistant General Counsel for Administration shall notify the subject individual of the disclosure at his or her last known address. The notice of such disclosure shall be in writing and shall state the:

- (1) Nature of the information disclosed;
- (2) Person, organization or agency to which it was disclosed;
- (3) Date of disclosure; and
- (4) Compelling circumstances justifying the disclosure.

§ 404.21 Submission of social security and passport numbers.

(a) *Policy.* Ex-Im Bank recognizes the importance of assessing, to the extent reasonably possible, the risks associated with transactions supported by

Ex-Im Bank. It is often difficult to assess risks related to individuals and non-publicly traded entities. Therefore, when an individual or a non-publicly traded entity applies for participation in an Ex-Im Bank program or is proposed as a guarantor for an Ex-Im Bank transaction, Ex-Im Bank may request social security and/or U.S. passport numbers from such individual or from the principals of such entity. Ex-Im Bank shall not require submission of this information, and unwillingness or inability to provide a social security or passport number shall not affect Ex-Im Bank's decision on an application for Ex-Im Bank assistance.

(b) *Use.* Ex-Im Bank shall use social security and passport numbers to assess the creditworthiness of Ex-Im Bank program participants and as a mechanism for enforcing agreements with Ex-Im Bank. Such information shall not be disclosed, except as warranted by law and regulation.

(c) *Notice.* Whenever Ex-Im Bank requests a social security or passport number, Ex-Im Bank shall place an appropriate Privacy Act notification on the form used to collect the information.

§ 404.22 Government contracts.

(a) *Approval by Assistant General Counsel for Administration.* Ex-Im Bank shall not contract for the operation of a system of records or for an activity that requires access to a system of records without the express, written approval of the Assistant General Counsel for Administration.

(b) *Contract clauses.* Any contract authorized under paragraph (a) of this section shall contain the standard contract clauses required by the Federal Acquisition Regulation (48 CFR 24.104) to ensure compliance with the requirements imposed by the Privacy Act. The division within Ex-Im Bank that is responsible for technical supervision of the contract shall be responsible for ensuring that the contractor complies with the Privacy Act contract requirements.

(c) *Contractor status.* Any contractor that operates an Ex-Im Bank system of records or engages in an activity that requires access to an Ex-Im Bank system of records shall be considered an

Export-Import Bank of the U.S.

§ 404.26

Ex-Im Bank employee for purposes of this subpart. Ex-Im Bank shall supply any such contractor with a copy of the regulations in this subpart upon entering into a contract with Ex-Im Bank.

§ 404.23 Other rights and services.

Nothing in this subpart shall be construed to entitle any person to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act.

Subpart C—Demands for Testimony of Current and Former Ex-Im Bank Personnel and for Production of Ex-Im Bank Records

SOURCE: 71 FR 14361, Mar. 22, 2006, unless otherwise noted.

§ 404.24 General provisions.

(a) *Purpose.* This subpart establishes policy, assigns responsibilities and prescribes procedures with respect to:

(1) The production or disclosure of official information or records of Ex-Im Bank in all legal proceedings to which Ex-Im Bank is not a party;

(2) Demands for testimony of Ex-Im Bank personnel related to information acquired as a result of performance of their official duties, or by virtue of their official status, in all legal proceedings where Ex-Im Bank is not a party; and

(3) The offer of expert or opinion testimony by Ex-Im Bank personnel regarding matters related to the performance of their official duties.

(b) *Policy.* Ex-Im Bank seeks to further the following goals in enacting this subpart:

(1) Conservation of agency resources for official business;

(2) Minimization of agency involvement in controversial issues unrelated to its mission;

(3) Maintenance of the agency's impartiality amongst private litigants;

(4) Protection of confidential and/or sensitive information; and

(5) Maintenance of the integrity of the agency's deliberative processes.

§ 404.25 Applicability.

This subpart applies exclusively to demands for testimony and/or production of records issued to Ex-Im Bank personnel, in connection with legal proceedings to which Ex-Im Bank is not a party, regarding information acquired in the course of the performance of official duties or due to their official status. Nothing in this subpart shall be construed to waive the sovereign immunity of the United States. This subpart shall not apply to the following:

(a) Demands for testimony and/or production of records pursuant to a legal proceeding to which Ex-Im Bank is a party;

(b) Demands for testimony and/or production of records in those instances in which Ex-Im Bank personnel are asked to disclose information wholly unrelated to their official duties; and

(c) Congressional demands and requests for testimony or records.

§ 404.26 Definitions.

For purposes of this subpart, the following definitions shall apply—

Demand—includes an order, subpoena, or other compulsory process issued by a party in litigation or a court of competent jurisdiction, requiring the production or release of Ex-Im Bank information or records, or requiring the testimony of Ex-Im Bank personnel.

Ex-Im Bank personnel—includes any current or former officer or employee of Ex-Im Bank, including all individuals who have been appointed by, or subject to, the official supervision, jurisdiction, or control of any Ex-Im Bank employees. This definition encompasses all individuals hired through contractual agreements with Ex-Im Bank, such as: consultants, contractors, sub-contractors, and their employees.

Legal proceeding—a case or controversy pending before any federal, state, or local court, including a grand jury proceeding; a proceeding before a federal, state, or local administrative judge, board, or other similar body with adjudicative powers; or a legislative proceeding before a state or local legislative body.

§ 404.27

Records—all documentary materials that Ex-Im Bank creates or receives in connection with the transaction of official business, including any materials classified as “Federal records” under 44 U.S.C. 3301 and its implementing regulations.

Testimony—written or oral statements, including, but not limited to, depositions, answers to interrogatories, affidavits, declarations, and any other statements made in a legal proceeding, including any expert or opinion testimony.

§ 404.27 Demand requirements.

A party’s demand for testimony and/or production of records by Ex-Im Bank personnel regarding information acquired in the course of their performance of official duties or due to their official status shall be set forth in, or accompanied by, a signed affidavit or other written statement. Such affidavit or written statement must be submitted at least 30 days prior to the date such testimony and/or production of records is requested to be taken and/or produced. A copy of the affidavit or written statement shall be served on the other parties to the legal proceeding. The affidavit or written statement must:

- (a) Be addressed to the Export-Import Bank of the United States, Office of the General Counsel, 811 Vermont Ave., NW., Washington, DC 20571;
- (b) State the nature of the legal proceeding, including any docket number, title of the case, and the name of the administrative or adjudicative body before which the proceedings are to be heard;
- (c) State the nature of the testimony or records sought;
- (d) State the relevance of the information sought to the legal proceedings;
- (e) State why such information can only be obtained through testimony or production of records by Ex-Im Bank personnel; and
- (f) Comply with all procedures governing valid service of process.

§ 404.28 Notification of General Counsel required.

Ex-Im Bank personnel receiving a demand for testimony and/or production of records regarding information ac-

12 CFR Ch. IV (1–1–07 Edition)

quired in the course of their performance of official duties, or due to their official status, shall immediately notify the General Counsel of Ex-Im Bank (“General Counsel”) upon receipt of such demand. The General Counsel maintains the exclusive authority to waive the requirements of any or all sections of this subpart and reserves the right to delegate his or her authority under this subpart to other appropriate Ex-Im Bank personnel.

§ 404.29 Restrictions on testimony and production of records.

Ex-Im Bank personnel may not provide testimony and/or produce records regarding information acquired in the course of their performance of official duties, or due to their official status, in connection with any legal proceeding to which this subpart applies, without authorization by the General Counsel. Such authorization must be in writing, unless the General Counsel determines that circumstances warrant an oral authorization, and such oral authorization is subsequently documented.

§ 404.30 Factors General Counsel may consider in determining whether to authorize testimony and/or the production of records.

In determining whether to authorize Ex-Im Bank personnel to provide testimony and/or produce records regarding information acquired in the course of their performance of official duties, or due to their official status, the General Counsel may consider factors including, but not limited to, the following:

- (a) Efficiency—the conservation of the time and resources of Ex-Im Bank personnel for the conduct of official business;
- (b) Undue burden—whether the demand creates an undue burden upon Ex-Im Bank or is otherwise inappropriate under any applicable administrative or court rules;
- (c) Appearance of bias—whether the testimony and/or production of records could result in the public perception that Ex-Im Bank is favoring one party over another, or advocating the position of a party to the proceeding;

Export-Import Bank of the U.S.

§ 404.33

(d) Furtherance of agency policy—whether the testimony and/or production of records is consistent with the policy and mission of the Ex-Im Bank;

(e) Prevention of fraud or injustice—whether the disclosure of the information requested is necessary to prevent the perpetration of fraud or injustice;

(f) Relevance to litigation—whether the testimony and/or production of records sought is relevant to the subject litigation;

(g) Necessity—whether the testimony and/or production of records, including a release of such *in camera*, is appropriate or necessary as determined by either the procedural rules governing the legal proceeding, or according to the relevant laws concerning privilege;

(h) Availability from another source—whether the information sought through testimony or production of records is available from another source;

(i) Violations of laws or regulations—whether the testimony and/or production of records would violate a statute, regulation, executive order, or other official directive;

(j) Classified information—whether the testimony and/or production of records would improperly reveal information classified pursuant to applicable statute or Executive Order; and

(k) Compromise of rights and interests—whether the testimony and/or production of records would compromise any of the following: law enforcement interests, constitutional rights, national security interests, foreign policy interests, or the confidentiality of commercial and/or financial information.

§ 404.31 Procedure for declining to testify and/or produce records.

Ex-Im Bank personnel receiving a demand to provide testimony and/or produce records regarding information acquired in the course of their performance of official duties, or due to their official status, and who have not received written authorization from the General Counsel to provide such information, shall:

(a) Respectfully decline to answer or appear for examination on the grounds that such testimony is forbidden by this subpart;

(b) Request the opportunity to consult with the General Counsel;

(c) Explain that only upon consultation may they be granted approval to provide such testimony;

(d) Explain that providing such testimony or records absent approval may subject the individual to criminal liability under 18 U.S.C. 641, as well as other applicable laws, and other disciplinary action; and

(e) Request a stay of the request or demand pending a determination by the General Counsel.

§ 404.32 Procedure in the event a decision concerning a demand is not made prior to the time a response to the demand is required.

If response to a demand is required before a determination has been rendered by the General Counsel, the U.S. Attorney or such other attorney as may be designated for the purpose will appear with the Ex-Im Bank personnel upon whom the demand has been made, and will furnish the court or other authority with a copy of the regulations contained in this subpart and inform the court or other authority that the demand has been or is being, as the case may be, referred for prompt consideration of the General Counsel. The court or other authority shall be requested respectfully to stay the demand pending determination by the General Counsel.

§ 404.33 Procedure in the event of an adverse ruling.

If the court or other authority declines to stay the effect of the demand in response to a request made in accordance with § 404.32 pending a determination by the General Counsel, or if the court or other authority rules that the demand must be complied with irrespective of the instructions from the General Counsel not to produce the material or disclose the information sought, the Ex-Im Bank personnel upon whom the demand has been made shall respectfully decline to comply with the demand (*United States ex rel. Touhy v. Ragen*, 340 U.S. 462).

§ 404.34

§ 404.34 Procedure for demands for testimony or production of documents regarding confidential information.

In addition to compliance with the requirements of this subpart, demands to provide testimony and/or produce records that concern information protected by the Privacy Act, 5 U.S.C. 552a, or any other authority mandating confidentiality of certain classes of records or information, must also satisfy the requirements for disclosure imposed by such authority before records may be produced or testimony given.

§ 404.35 Procedures for requests for Ex-Im Bank employees to provide expert or opinion testimony.

No Ex-Im Bank personnel may, unless specifically authorized by the General Counsel, testify in any legal proceeding as an expert or opinion witness as to any matter related to his or her duties or the functions of the Ex-Im Bank, including the meaning of Ex-Im Bank documents. Any demand for expert or opinion testimony shall comply with the policies and procedures outlined in this subpart.

§ 404.36 No private right of action.

Nothing in this subpart shall be construed as creating any right, substantive or procedural, enforceable at law or equity by a party against Ex-Im Bank or the United States.

Subparts D–E [Reserved]

PART 405 [RESERVED]

PART 407—REGULATIONS GOVERNING PUBLIC OBSERVATION OF EX-IMBANK MEETINGS

Sec.

407.1 Purpose, scope and definitions.

407.2 Closing meetings.

407.3 Procedures applicable to regularly scheduled meetings.

407.4 Procedures applicable to other meetings.

407.5 Certification by General Counsel.

407.6 Transcripts, recordings and minutes of closed meetings.

407.7 Relationship to Freedom of Information Act.

12 CFR Ch. IV (1–1–07 Edition)

AUTHORITY: Sec. (g) Government in the Sunshine Act, 5 U.S.C. 552b(g); secs. (b) through (f), 5 U.S.C. 552b.

SOURCE: 42 FR 12417, Mar. 4, 1977, unless otherwise noted.

§ 407.1 Purpose, scope and definitions.

(a) Consistent with the principles that: (1) The public is entitled to the fullest practicable information regarding the decision-making processes of the Federal Government, and (2) the rights of individuals and the ability of the Export-Import Bank of the United States to carry out its statutory responsibilities should be protected, this part is promulgated pursuant to the directive of section (g) of the Government in the Sunshine Act, 5 U.S.C. 552b(g), and specifically implements sections (b) through (f) of said Act, 5 U.S.C. 552b (b) through (f).

(b) The term *meeting* means any meeting of the Board of Directors of Eximbank at which a quorum is present or any meeting of the Executive Committee of the Board of Directors where deliberations of the Board of Directors or the Executive Committee determine or result in the joint conduct or disposition of official Eximbank business.

(c) The term *regularly scheduled meeting* means meetings of the Board of Directors or the Executive Committee which are held at 9:00 a.m. on Thursday of each week.

(d) The term *General Counsel* means the General Counsel and his or her designees.

[42 FR 12417, Mar. 4, 1977, as amended at 47 FR 12136, Mar. 22, 1982; 49 FR 41237, Oct. 22, 1984]

§ 407.2 Closing meetings.

(a) Except where Eximbank finds that the public interest requires otherwise, a meeting, or any portion thereof, may be closed to the public, where the Board of Directors or the Executive Committee determines that such meetings, or any portion thereof, or information pertaining to such meeting, or any portion thereof, is likely to:

(1) Disclose matters that are: (i) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact